

## Chapter 6 – Standards of Performance and Evaluation

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### Section I Performance Evaluation

#### Purpose

To provide procedures for evaluating employees on a regular basis.

#### Scope

This policy applies to all employees.

#### A. Performance Management

Performance management involves establishing performance standards followed by providing performance coaching and formal performance evaluation.

##### 1. Performance Standards

Performance standards should be developed for each position. Although positions in the same classification should have similar performance standards, the standards may differ based on actual duties performed. Performance standards serve to clarify the functions, duties, and responsibilities of a position and the time and manner in which they are to be performed. Some of the general criteria that apply to performance standards include:

- a. Having an articulated and measurable standard of performance for each duty, function, and responsibility that will form the basis for evaluating performance throughout the year.
- b. Having a mutual and well defined understanding of the duties of the position and the level of performance the employee is expected to achieve.

##### 2. Performance Coaching

An employee's performance is to be assessed throughout the year and the achievements and areas of improvement noted. Performance coaching is usually done informally but to be effective it should be done on a regular recurring basis. At the end of the performance year, an employee should have some view of how effective past performance has been in meeting the supervisor's expectations.

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### 3. Performance Evaluation

- a. The formal performance evaluation is the culmination of a continuous supervisory process during which the employee already had the opportunity to be aware of accomplishments and areas where improvement is necessary.
- b. The performance evaluation should be based on material that has been part of performance coaching conferences. It should not contain factors that have not been previously communicated to the employee in the performance standards or in performance coaching.
- c. The performance evaluation should be supported by concrete examples of strengths and weaknesses.

### **B. When Performance Evaluations are Conducted**

#### 1. End of Probationary Period

No later than two weeks before the end of the probationary period, a performance evaluation must be conducted by the supervisor.

#### 2. Change in Classification Status

An employee receiving a promotion or other change in classification must have a performance evaluation eleven months from the date of the classification change. Thereafter, the performance evaluation shall be made annually one month prior to the month and day of the promotion, title change, or demotion.

#### 3. Annual Performance Evaluation

- a. An annual performance evaluation is required of all employees. For every employee there shall be established a performance evaluation date; this date shall be as follows:
  - (1) For employees who have successfully concluded the probationary period, the date that the employee ended probationary status shall be the annual performance evaluation date.
  - (2) For employees who have changed classification status, the date that the employee's classification changes shall be the annual performance evaluation date.
- b. The annual performance evaluation should be conducted at least one month prior to the annual performance evaluation date, however, extenuating circumstances may result in an evaluation later than one month prior to the evaluation date.

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### C. Conducting the Evaluation

#### 1. Determining Level of Performance

- a. After determining whether the employee's performance is satisfactory, the supervisor should make appropriate recommendations and sign and date the evaluation.
- b. The next level supervisor reviews and signs the evaluation and makes any appropriate comments. The reviewer may not make any changes on the evaluation; however, any comments should be shared with the evaluator and the employee.

#### 2. Evaluation Meeting

- a. After the performance evaluation has been completed and reviewed by the reviewer, the supervisor must discuss the evaluation with the employee.
- b. The employee is expected to sign and date the evaluation and may make any comments desired. The employee's signature does not necessarily indicate agreement with the evaluation; however, it does indicate that the evaluation has been seen. If the employee declines to sign the evaluation, the supervisor should enter the comment "refused to sign" on the appropriate line. The failure of the employee to sign the evaluation has no effect on the validity or finality of the performance evaluation.
- c. Once the evaluation is discussed with the employee, it is to become an official document in the employee's personnel file.

### D. Unsatisfactory Performance

When an employee's performance is determined to be less than satisfactory there shall be a review of the performance by the employee's supervisor, the Director, and the LDSS personnel officer (if the LDSS has a personnel officer). At the conclusion of this review, the Director is to determine whether the unsatisfactory performance should be classified as Category One or Category Two.

#### 1. Category One

The conduct, effort, and desire of the employee to perform is not the issue in Category One. This category includes performance difficulty resulting from an inability to adapt to job requirements. If a determination is made that the employee lacks the ability, the following steps should be taken:

- a. A plan of action should be outlined identifying any options that might reasonably exist at the time or in the near future such as reassignment to an opening elsewhere in the LDSS that would be compatible with the employee's ability.

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Such an opening may be an equal or lower rated position. The lateral or downward placement of such employees within a LDSS will take precedence over the hiring of new employees into the LDSS.

- b. In some cases in this category, an employee may possess highly satisfactory skills for other occupational classes. In such instances, the employee may elect to apply for openings at a higher level in which case the employee will be considered along with other applicants.
- c. The employee should be advised that if a solution fails to materialize during the next three months, the employee will be asked to resign. If the employee does not elect to resign, such employee will be removed. The removal should be identified as “unadapted for assigned work”.

### 2. Category Two

Unsatisfactory job performance as a result of insufficient job application or self-discipline regarding job performance will constitute Category Two.

- a. Performance difficulty resulting from insufficient job applications or self-discipline regarding job performance may constitute inadequate or unsatisfactory job performance as identified in the Standards of Conduct.
- b. A supervisor confronted with a Category Two performance situation should discuss the seriousness of the performance problem with the employee. The employee should be advised that unless the performance is corrected, corrective action as outlined in the Standards of Conduct will apply.
- c. There is no specific time period for the corrective action process. In some cases, no written notices will need to be issued because of the employee's responsiveness to the situation. In other cases, the employee may ultimately be terminated as the result of the accumulation of written notices. The time between the written notices will vary with the nature of the assigned work and the employee's particular problem. In a case where accuracy is the problem, repetition or error may be noticed very quickly, and the written notice would be issued accordingly. In other instances where job cycles are longer or the performance problem is more difficult to measure, the time between written notices may be several months.
- d. If the performance is corrected and such correction is evident on a sustained basis, a performance evaluation should be done on the employee. If the new evaluation is satisfactory, and the employee is not at the maximum pay rate, a performance increase should be processed. A performance increase may not be delayed in excess of 12 months following the issuance of the last written notice for corrective action purpose.

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### Section II Workplace Violence

#### Purpose

The purpose of this policy is to provide procedures to deal with violence in the workplace.

#### Scope

This policy applies to all employees.

#### A. Definitions

1. Third Parties

Individuals who are not LDSS employees, such as relatives, acquaintances, clients or strangers.

2. Workplace

Any location where an employee performs work-related activities. This includes, but is not limited to, the buildings and the surrounding perimeters, including the parking lots, field locations, alternative work locations and travel to and from work assignments.

3. Workplace Violence

Any physical assault, threatening behavior or verbal abuse occurring in the workplace by employees or third parties. It includes, but is not limited to, beating, stabbing, suicide, shooting, rape, attempted suicide, acts of intimidation, stalking, and harassment of any nature. Oral and written statements, gestures, or expressions that communicate to a reasonable person a direct or indirect threat of physical harm or psychological harm are included in this definition.

#### B. Prohibited Actions

Workplace violence is prohibited. Actions that may constitute workplace violence include, but are not limited to:

1. Injuring another person physically;
2. Engaging in behavior that creates a reasonable fear of injury or psychological harm to another person;

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3. Possessing, brandishing, or using a weapon while on the LDSS premises or engaged in LDSS business (excludes law enforcement activities done by a sworn law enforcement officer);
4. Threatening to injure an individual or to damage property;
5. Committing injurious acts to a person or to LDSS property; and
6. Uncontrolled anger that manifests itself in some physical act.
7. Any act that would be deemed to be “workplace violence.”

### **C. Policy Violations**

Employees violating this policy are subject to disciplinary action up to and including termination.



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### Section III Outside Employment and Conflicts of Interest

#### Purpose

The purpose of this policy is to provide procedures on when and how an employee may engage in a non-work related remunerative activity, to set forth rules for ethical conduct, and guidelines on conflict of interest.

#### Scope

This policy applies to all employees.

#### A. Summary of Prohibited Activities

1. An employee may not engage in a remunerative activity without prior approval by the Director. Remunerative activities include, but are not limited to, employment, contracting, operating or financing a business, or engaging in professional activities. A remunerative activity does not include stock or bond ownership in publicly traded companies or other passive income from such companies.
2. Accepting anything of value over (\$30) for work performed on behalf of the LDSS or because of an association with the LDSS.
3. Engaging in a transaction or a contract that constitutes a conflict of interest under the Virginia Conflict of Interest Act. The Virginia Conflict of Interest Act is found in §§ 2.2-3100 *et. seq.* of the *Code of Virginia* and may be amended at any time.
4. Engaging in activities that may compromise the services delivered by the LDSS by violating professional standards.

#### B. Procedures for Engaging in Outside Employment

1. Prior to engaging in a remunerative activity, an employee must obtain approval of the Director as follows:
  - a. An employee must complete the Request to Engage in Outside Employment form and answer all questions completely and accurately and submit it to the Director.
  - b. The employee should be provided with a prompt response (normally within three working days).
  - c. Permission should not be withheld unless there are reasonable grounds to believe that the time and effort required to engage in such activity would interfere with the employee's duties for the LDSS, would constitute a conflict of

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interest under the Conflict of Interest Act, or would compromise the integrity of the duties performed by the LDSS (e.g., operating or employment with a child care center or other entity regulated by the LDSS).

2. Approval to engage in remunerative activities may be withdrawn in the following circumstances:
  - a. When work performance and/or production declines.
  - b. When flexibility in scheduling work activities is compromised.
  - c. When the remunerative activities create a dual relationship with clients, customers, and/or entities with whom the LDSS serves (e.g., serving as a guardian *ad litem* for a child receiving services from the LDSS).
  - d. When a conflict of interest under the Virginia Conflict of Interest Act is made known.

### C. Gifts and Other Things of Value Received

1. Items of value (over \$30) for work performed for the LDSS or received because of the employee's association with the LDSS must be declined or, in the case of honorariums and stipends, turned over to the LDSS.
2. Notwithstanding this rule, an employee may accept (1) the free participation in an event or dinner to which you have been invited as a member of a group or organization or (2) may accept a meal or other event of value greater than \$30, provided approval of the Director has been given and such acceptance does not constitute a conflict of interest under the Virginia Conflict of Interest Act.
3. Although token gifts (valued at less than \$30) may be accepted, they should be declined in all circumstances when the intent of the giver is to obtain special consideration.

### D. Conflict of Interest

1. Under the Virginia Conflict of Interest Act, §2.2- 3100 *et. seq.* of the *Code of Virginia*, an employee may not have a personal interest<sup>1</sup> (generally \$10,000) in a

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<sup>1</sup> Section 2.2-3101 provides: "Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

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transaction or contract of the LDSS (Note: other types of business interests are also prohibited). The personal interest can arise through the activities of the employee or a family member. Additional employment or other remunerative activity may fall within the prohibited activities. Engaging in a conflict of interest is a criminal offense. Every employee should be familiar with the Act. To protect oneself, an employee should seek an opinion from the local government attorney or Commonwealth Attorney prior to engaging in an activity that might constitute a conflict of interest.

Those involved in procurement activities should also be aware of the restrictions found in the Ethics in Public Contracting Act, § 2.2-4367 *et. seq.* of the *Code of Virginia*.

### **E. Ethical and Conflict of Interest Standards**

#### **1. General Ethical Standards**

It is every employee's obligation to make sure that on the job conduct enhances the public's trust in the LDSS and its mission. Therefore, when engaged in work activities every employee should:

- a. Avoid activities which conflict or may appear to conflict with the best interest of the LDSS and its clients. Activities such as having a personal involvement with a current or potential vendor, grantee, or recipient of services fall within this category. If the relationship is disclosed to the Director and it is deemed appropriate, the relationship can continue;
- b. Ensure that travel, entertainment, and related expenses are reasonable and incurred solely for the business of the LDSS and not for personal gain or benefit;
- c. Decline a gift, gratuity, favor, food, transportation, lodging or entertainment for the performance of LDSS duties or offered to influence decisions made on behalf of the LDSS. Exceptions to this rule would be promotional items of nominal value (\$30). If uncertain as to the value of the gift in question or of the appearance of impropriety, clarification should be sought from the Director;
- d. Refrain from participating in or otherwise influencing the selection of staff, consultants, or vendors who are relatives or personal friends;
- e. Not allow personal beliefs and practices whether they be religious, life style, dietary, etc. to enter into the professional relationship with the client;
- f. Show respect for and be courteous to co-workers, clients, and the public.
- g. Disclose all potential conflicts of interest in any matter to the Director.
- h. Ensure that all information, which is confidential, privileged or nonpublic, is not disclosed to third parties.

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This list is not exclusive and other actions may constitute a breach of General Ethical Standards.

### 2. Professional Standards

A social worker or eligibility worker must always maintain the highest professional standards and shall:

- a. Maintain the best interest of the client as the primary professional obligation;
- b. Carry out his professional duties and obligations with integrity and objectivity;
- c. Have and maintain competence in the provision of client services.
- d. Not exploit the relationship with a client for personal benefit, gain or gratification.
- e. Protect the confidentiality and privacy of all information acquired from the client or others regarding the client and the client's family unless:
  - (1) The client authorizes in writing the release of specified information;
  - (2) The information is released under the authority of a statute or an order of a court of competent jurisdiction; or
  - (3) Otherwise authorized by the *Code of Virginia*;
- f. Not allow another profession, occupation, affiliation, or calling to affect the professional relationship with the client;
- g. Develop and maintain the required skills and competence to perform the job; and
- h. This list is not exclusive and other actions may constitute a breach of Professional Standards.

### 2. Disclosure of Conflicts

Any known or possible breaches of these standards or of the Conflict of Interest statute should be disclosed. The disclosure should be made to the Director as soon as possible. All reports of possible breaches will be treated confidentially to the fullest extent permitted by law. All reports will be investigated and, if needed, appropriate action taken based upon the policies of the organization. Retaliation against a person who suspects and reports, in good faith, is a violation of this policy.

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### Section IV Standards of Conduct

#### Purpose

The purpose is to establish standards of conduct and work performance and the procedures to be used should such standard not be met. Accordingly, this policy sets forth (1) standards for employee conduct, (2) behavior that is unacceptable, and (3) corrective actions that may be imposed.

#### Scope

This policy applies to all employees.

#### A. Standards of Conduct

The following standards are not all-inclusive but are intended to be illustrative of minimum expectations for acceptable work performance and workplace behavior.

##### 1. Attendance

- a. An employee should report to work as scheduled.
- b. If an employee cannot report as scheduled, the employee should:
  - (1) Arrange planned absences, including reporting to work late or leaving work early, in advance with supervisors.
  - (2) Report unexpected absences, including reporting to work late or having to leave early, to supervisors as promptly as possible.
- c. While at work, an employee should:
  - (1) Adhere to scheduled break and lunch times.
  - (2) Avoid engaging in personal matters while at work.
- d. Overtime work:

An employee is expected to work overtime hours including weekends, holidays, evenings and emergency duty when directed by the supervisor.

A non-exempt employee (as defined by the Fair Labor Standards Act) should not work overtime hours unless expressly directed to do so by the supervisor.

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### 2. Satisfactory Work Performance

- a. An employee is expected to meet established performance standards on a sustained basis.
- b. An employee is expected to abide by all LDSS policies and directives.
- c. An employee who does not understand a policy are expected to ask for guidance.

### 3. Report Circumstances that May Affect Satisfactory Work Performance

- a. An employee should report to the supervisor any conditions or circumstances that prevents or impedes satisfactory work performance.
- b. An employee should advise the supervisor of unclear instructions or procedures that may affect satisfactory work performance.
- c. An employee must report to the supervisor the following:
  - (1) Criminal convictions.
  - (2) Convictions of a moving vehicle offense (if the employee uses the LDSS vehicle or transports clients).
  - (3) Child or Adult Protective Services complaints.
  - (4) Hatch Act violations.

## **B. Unacceptable Standards of Conduct (Disciplinary Offenses)**

### 1. List of Offenses is Not All-Inclusive

The offenses set forth below are not all-inclusive but are intended as examples of unacceptable behavior for which specific disciplinary actions may be warranted. Accordingly, any offense that undermines the effectiveness of LDSS's activities may be considered unacceptable and treated in a manner consistent with the provisions of this section.

### 2. Grouped According to Severity

The offenses listed below are organized into three groups according to the severity of the behavior, with Group I being the least severe. Mitigating and aggravating circumstances may generally be considered in determining the appropriate level of discipline.

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Conduct listed at one level may under certain circumstances be issued at a higher or lower level.

a. Group I

These offenses include facts and behaviors that are less severe and are such that the accumulation of four Group I written notices will normally result in termination:

- (1) Unsatisfactory attendance or excessive tardiness.
- (2) Abuse of LDSS time, including unauthorized time away from the work station, use of LDSS time for personal business, leaving the work site unattended, or abuse of sick leave.
- (3) Use of obscene words or gestures.
- (4) An incidence of inadequate or unsatisfactory work performance.
- (5) Disruptive behavior.
- (6) Conviction of a moving traffic violation while using an LDSS-owned vehicle or while transporting clients.
- (7) Sleeping on the job.

b. Group II

These offenses include acts and behavior that are more severe in nature and are such that an accumulation of two Group II written notices or offenses normally should warrant removal.

- (1) Refusal to follow a supervisor's instructions, perform assigned work, or otherwise comply with workplace rules and policies.
- (2) Knowingly or with careless indifference violate a safety rule where there is not a threat of bodily harm.
- (3) Leaving the work site during work hours without permission.
- (4) Failure to report to work as scheduled without proper notice to the supervisor.
- (5) Unauthorized use or misuse of LDSS property including computers or records.
- (6) Neglect of duties, indifference to critical time periods or other work demands.
- (7) Carelessness in recording and maintaining LDSS records.

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- (8) Breach of client confidentiality or unauthorized disclosure of LDSS information.
- (9) Violation of the Alcohol and Other Drugs Policy.
- (10) Violation of the Equal Employment Opportunity Policy.

c. Group III

These offenses include acts and behavior of such a serious nature that a first Group III written notice or offense normally warrants removal.

- (1) Absence without proper authorization or a satisfactory reason.
- (2) Falsifying a public record, including, but not limited to, employment records, vouchers, reports, insurance claims, time records, leave records, or other LDSS documents.
- (3) Damaging or defacing LDSS records, LDSS property or property of other persons.
- (4) Theft or unauthorized removal of LDSS records, LDSS property, or the property of other persons.
- (5) Gambling on LDSS property or during work hours.
- (6) Fighting and/or other acts of violence in the workplace or while engaged in LDSS business.
- (7) Knowingly or with careless indifference violating safety rules where there is a threat of physical harm.
- (8) Participating in any kind of work slowdown or similar concerted interference with LDSS operations.
- (9) Unauthorized possession or use of firearms, dangerous weapons, or explosives in the workplace.
- (10) Threatening, coercing or physically assaulting persons associated with the LDSS (including, but not limited to employees, supervisors, clients, visitors, and contractors).
- (11) Criminal conviction for conduct occurring on or off the job that clearly is related to job performance or are of such a nature that to continue an employee in the position could constitute negligence in regard to LDSS's duties to the public or to other LDSS employees.



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- (12) Failure of an employee whose job requires carrying a firearm or who has authorization to carry a firearm to report conviction for the “misdemeanor crime of domestic violence”.
- (13) Appropriating or otherwise using LDSS information for personal advantage or gain.
- (14) Refusal to work overtime hours, holidays, weekends, evenings, or in emergency situations.

### **C. Counseling**

- 1. While it is hoped that most performance and behavior problems can be resolved through informal counseling, counseling is not a prerequisite to formal disciplinary action.
- 2. Counseling should consist of a private discussion between the employee and the supervisor regarding the nature and significance of the actions constituting the offense and the desired course of action to improve the employee's performance and/or behavior.
- 3. Documentation of Counseling
  - a. Counseling may be informal and given without written documentation.
  - b. Counseling may be documented by a letter or memorandum separate from the Written Notice form.
  - c. Documentation regarding counseling should be retained in the supervisor's files, not in the personnel file, except as used to support subsequent formal disciplinary action.
  - d. Counseling memorandum are not grievable.

### **D. Procedures for Implementing Disciplinary Actions**

#### **1. Disciplinary Action**

Disciplinary action is taken through the issuance of a Written Notice and may also include a:

- a. Suspension;
- b. Transfer or demotion along with a disciplinary salary action; or
- c. Termination.

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### 2. Procedures Regarding Issuance of Written Notices

#### a. The active life of a Written Notice shall be:

- (1) Group I offense is active for two years.
- (2) Group II offense is active for three years.
- (3) Group III offense is active for four years.
- (4) A Written Notice that is no longer active may not be considered for the accumulation of Written Notices.
- (5) A Written Notice whether active or not may be used in any type of proceeding to show that the employee had knowledge of a rule, prior warning of misconduct, or pattern of unacceptable conduct. Inactive and active Written Notices may be considered when determining mitigating or aggravating factors.

#### b. Active Written Notices should be kept in the employee's personnel files.

- (1) A Written Notice must be removed from an employee's personnel file when the Written Notice is vacated by the LDSS or not upheld in a grievance proceeding.
- (2) A Written Notice so vacated shall not be destroyed but shall be retained in a grievance file or separate confidential file.
- (3) A Written Notice vacated may not be counted towards the accumulation of Written Notices.

### 3. Mitigating and Aggravating Circumstances

#### a. Mitigating and aggravating circumstances, such as discussed below, may be considered in determining the level of discipline and/or any suspension or termination:

##### (1) Mitigating circumstances include:

- (a) Factors that in the interest of fairness would compel a reduction in the disciplinary action such as an employee's long service and/or prior satisfactory work performance.
- (b) Mitigating circumstances may result in:
  - (i) An employee's demotion or transfer with a disciplinary salary reduction and/or suspension, as an alternative to termination

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- (ii) A suspension for less than thirty (30) days; or
    - (iii) The issuance of a lesser Group Written Notice for a higher level offense.
  - (2) Aggravating circumstances:
    - (a) Factors that existed prior to the offense or which occurred in conjunction with the misconduct that would justify the issuance of a higher level of discipline such as:
      - (i) Willful deliberate misconduct;
      - (ii) Conduct that caused severe harm to others or to the LDSS.
    - (b) Aggravating circumstances may result in more severe discipline or termination rather than a suspension. For example, a serious infraction of a personnel rule may result in the issuance of a Group III Written Notice.
- 4. Disciplinary Actions for Specific Offenses
  - a. For Group I offenses or an unsatisfactory pattern of attendance:
    - (1) The disciplinary action for a Group I offense generally consists of the issuance of a Written Notice with no other employment action.
    - (2) Group I Written Notices are cumulative.
      - (a) Upon the accumulation of two active Group I Written Notices, the employee normally should be suspended without pay for up to five workdays.
      - (b) The employee should be notified that a subsequent Written Notice for any level of offense may result in suspension or termination.
      - (c) A fourth active Group I Written Notice should result in termination.
  - b. For Group II offenses:
    - (1) The disciplinary action for a Group II offense generally consists of the issuance of a Written Notice only, or a Written Notice and a suspension without pay up to ten workdays.
    - (2) Group II Written Notices are cumulative
      - (a) A second active Group II Written Notice generally results in termination.

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- (b) A Group II Written Notice following two active Group I Written Notices should result in termination.

The employee should be notified that a subsequent Written Notice for any level of offense may result in suspension or termination.

- c. For Group III offenses:

- (1) The disciplinary action for a Group III offense generally consists of the issuance of a Written Notice and termination.
- (2) Mitigating factors may result in a suspension in lieu of termination.
- (3) If discharge is not taken due to mitigating factors, the employee should be notified that any subsequent disciplinary action will likely result in termination.

### 5. Notice of Proposed Disciplinary Action

- a. Prior to any disciplinary suspension, demotion, and/or transfer with a salary reduction, or a termination, an employee should be given oral or written notification of the offense and an explanation of the LDSS's basis for the proposed disciplinary action.
- b. Employees should be given a reasonable opportunity to respond, typically three to five days, after receiving notice of the proposed discipline. The response time must be applied consistently for all employees.
- c. Advance notice of proposed disciplinary action is not required under certain circumstances.
  - (1) An employee may be immediately removed from the work area, without providing advance notice, when the employee's continued presence:
    - (a) May be harmful to the employee, other employees, clients, and/or patients;
    - (b) Makes it impossible for the LDSS to conduct business;
    - (c) May constitute negligence in regard to the LDSS's duties to the public and/or other employees; or
    - (d) May destroy LDSS records.
  - (2) As soon as possible after an employee's removal from the work area, the employee should be provided with written notice of the proposed disciplinary action and provide the employee with a reasonable opportunity to respond before taking any disciplinary action.

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d. Written Notice

A Written Notice form should state the offense and the disciplinary action and the employee's right to grieve the disciplinary action. A copy of the Written Notice shall be placed in the employee's personnel file.

### **E. Procedures Related to Suspension**

1. Suspended Employees Access to Premises

- a. The employee on suspension is not allowed on the LDSS's premises, except to file and process a grievance, or allowed to work except to fulfill previously scheduled court obligations. (If an employee is on suspension and is required to report for court proceedings, the employee will be compensated for each hour worked.)

2. Suspensions During Investigation or Court Action

- a. A suspension with or without pay may be imposed during:

- (1) An investigation of an employee's conduct by his or her LDSS when having the employee remain on the premises may jeopardize or compromise the investigation; or
- (b) An investigation involving the employee's conduct by the State Police and/or other federal, state, or local law enforcement agencies; or
- (c) A court proceeding.

- b. Notice of Suspension

An employee should receive notification of a suspension imposed during an investigation or court action by written memorandum and not by the Written Notice form.

- c. Application of Accrued Annual Leave

- (1) At an employee's request, and at the LDSS's option, the employee's accrued annual leave may be used to cover the period of suspension so that there is no loss of earnings.
- (2) If, following the conclusion of the investigation, the LDSS determines that no disciplinary suspension or termination is appropriate, the accrued annual leave that was used during the period of suspension must be reinstated.

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d. The LDSS Determines That a Disciplinary Suspension is Warranted

If the LDSS determines that a disciplinary suspension is warranted, the period of suspension that the employee has served pending the investigation or court action shall count towards the period of disciplinary suspension.

e. Provisions Specific to Suspension Pending LDSS Investigation

(1) Length of Suspension

- (a) The period of suspension pending an LDSS investigation shall be limited to ten (10) workdays.
- (b) If the LDSS does not make a decision regarding disciplinary action within ten workdays, the employee shall be permitted to return to work (at the same or a different position with no loss in pay) pending completion of the LDSS investigation.

(2) The Investigation Concludes No Employee Misconduct

If the LDSS investigation clears the employee of any misconduct, the LDSS must reinstate the employee with back pay for the period of suspension.

f. Provisions specific to suspension pending investigation by law enforcement agencies or pending a court action

(1) Length of Suspension

The ten (10) day limit on the period of suspension that applies to suspensions pending LDSS investigations shall not apply if:

- (a) The court action or investigation by law enforcement agencies involves alleged criminal misconduct on the part of the employee; and
- (b) The misconduct under investigation is of such a nature that to retain the employee could constitute negligence in regard to the LDSS's duties to the public and other LDSS employees.

(2) Upon the conclusion of the investigation by law enforcement agencies or of the court action, the LDSS has the discretion to:

- (a) Impose disciplinary action, including termination; or
- (b) Reinstate the employee with full back pay.

g. Disciplinary Suspensions of Exempt Employees

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- (1) When necessary to impose a suspension for an exempt employee for reasons other than an infraction of a safety rule of major significance, the suspension period must be in increments of full days.
- (2) Suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full day. Safety rules of major significance are defined as rules intended to prevent serious danger to the workplace or to other employees, such as prohibiting smoking in explosive plants, oil refineries, and coal mines.

### 3. Pay and Benefits During Suspension

The provisions regarding compensation and benefits set forth below apply to suspensions, whether initiated pending an investigation or court action, or imposed for disciplinary reasons.

- a. All suspensions are without pay, except that an employee suspended pending an investigation or court action may be allowed to use accrued annual leave to receive pay.
- b. Performance Increases and Leave Accrual
  - (1) An employee's eligibility for performance increases may be affected by the time on suspension.
  - (2) No annual or sick leave will be earned while on suspension.
  - (3) Suspensions exceeding 14 calendar days shall affect an employee's length of service for purposes of annual and sick leave accrual.
- c. Insurance
  - (1) Health Insurance
    - (a) A suspended employee's health insurance coverage continues until the end of the month in which the suspension began.
    - (b) If the length of the period of suspension results in a termination of health plan coverage, the suspended employee is to be provided a COBRA Notice and a Continuation of Health Plan Coverage form and may elect to continue his or her group insurance coverage as well as that for covered dependents by paying the monthly insurance premiums (both the employee's and LDSS's contribution) in advance each month.
    - (c) Upon Reinstatement

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- (i) If an employee is reinstated with back pay covering any portion of the suspension, the LDSS shall make appropriate refund(s) to the employee for any health plan premiums that the employee paid to continue employee coverage (or other premium payments that the LDSS provides as a benefit) during the suspension.
- (ii) If an LDSS reinstates a suspended employee without back pay, there shall be no reimbursement for any portion of health plan premiums that the employee paid to continue coverage.

### **F. Use of the Grievance Procedure**

An eligible employee may challenge a disciplinary action through the grievance procedure.

### **G. Non-Disciplinary Terminations**

An employee unable to meet the employment requirements for the position due to circumstances such as those listed below may be removed and will not have access to the grievance procedure:

1. When a driver's license is required for the job, the loss of the driver's license, a driving record that would disqualify an employee from coverage under the LDSS's insurance policies without a special exception being made, or a driving record that would place the LDSS in a negligent situation if a client was transported by the employee.
2. Incarceration.
3. Loss of license or certification required for the job.
4. Conviction of one of the criminal offenses referred to as "barrier crimes" in § 63.2-1719 of the *Code of Virginia*, as amended.
5. Founded Child or Adult Protective Services complaint.



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### Section V Alcohol and Drugs

#### Purpose

The purpose of this policy is to establish procedures that will maintain a work environment free from the adverse effects of alcohol and other drugs.

#### Scope

This policy applies to all employees.

#### A. Definitions

1. Alcohol

Any product defined as such in the Alcohol Beverage Control Act, § 4.1-100 of the *Code of Virginia*, as amended.

2. Conviction

A finding of guilty (including a plea of guilty or *nolo contendere*), or imposition of sentence, or both, by any judicial body charged with the responsibility of determining violations of the federal or state criminal drug laws, alcohol beverage control laws, or laws that govern driving while intoxicated.

3. Criminal Drug Law

Possession of any controlled drug.

4. Controlled Drug

Any substance defined as such in the Drug Control Act, Chapter 34, Title 54.1 of the *Code of Virginia*, as amended, and/or Schedule I through V of the Controlled Substance Act (21 U.S.C. § 801) and whose manufacture, distribution, dispensation, use or possession is controlled by law.

#### B. Employee Responsibilities

1. No employee shall unlawfully manufacture, dispense, possess, use, or distribute any controlled substance, prescribed medication, or alcohol.
2. No employee may dispense or distribute any controlled substance or prescribed medication while at work. Likewise, no employee shall dispense, possess, use or distribute alcohol while at work.

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3. No employee shall consume alcoholic beverages immediately before work, during work hours, or while at work during breaks or lunches.
4. No employee shall be impaired by alcoholic beverages or illegal drugs during work hours.
5. No employee shall represent the LDSS in an official capacity while impaired by alcohol or illegal drugs.
6. If an employee is using prescription or non-prescription medication that may impair performance of duties, the employee shall report the nature of the impairment to his or her supervisor and not use equipment, vehicles or machines without permission.
7. An employee who has reason to believe that the performance of another employee is impaired by alcohol, illegal drugs, and/or medication shall immediately notify the supervisor.

### **C. Drug and Alcohol Screening**

#### **1. Reasonable Suspicion Testing**

The LDSS reserves the right to test all employees, regardless of position, for the presence of controlled substances and/or alcohol under the following situations:

- a. Upon reasonable suspicion that an employee is using a controlled substance and/or alcohol or is under the influence of a controlled substance and/or alcohol.
- b. Upon returning to work:
  - (1) After a serious on-duty or off-duty accident that involved the use of alcohol and/or a controlled substance; or
  - (2) After the employee had previously tested positive for controlled substance or alcohol use while on duty.

#### **2. Random Testing**

The LDSS reserves the right to test all employees and applicants in safety sensitive positions for the presence of controlled substances and/or alcohol under the following situations:

- a. After a conditional offer of employment;
- b. On a random basis;
- c. Upon returning to work after a serious on-duty or off-duty accident that involved the use of alcohol and/or a controlled substance, or after the employee has tested positive for controlled substance, or alcohol use while on duty.

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### 3. Refusal to Submit to Test

Applicants for safety sensitive positions who refuse to submit to a pre-employment controlled substance and/or alcohol test shall be removed from consideration for employment. Employees who refuse to submit to a controlled substance and/or alcohol test will be subjected to disciplinary action up to and including termination.

### 4. Reporting Requirements

Employees must notify the Director in writing of a conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction. The LDSS must inform any federal contracting or granting entity from which the LDSS has received a grant or award of financial assistance within ten (10) calendar days after receiving notice that the employee had been convicted of a criminal drug statute violation occurring in the workplace.

### 5. Violations

- a. A positive test result for alcohol or drugs.
- b. The unlawful or unauthorized manufacture, distribution, dispensing, possession, or use of alcohol or other drugs in the workplace;
- c. A criminal conviction for a:
  - (1) Violation of any criminal drug law, based upon conduct occurring either at or away from the workplace; or
  - (2) Violation of any alcohol beverage control law or law that governs driving while intoxicated, based upon conduct occurring at the workplace or during work time; and
- d. An employee's failure to report a conviction of any offense, as required in subsection D above.
- e. Failure to abide by the responsibilities in Section IV.

## **D. Disciplinary Action**

### 1. Violation of Policy

An employee who commits any violation, as described in Section V above, shall be subject to the full range of disciplinary actions up to and including termination.

### 2. Severity of Discipline

The severity of disciplinary action for violations of this policy shall be determined on a case-by-case basis. Mitigating circumstances that may be considered in

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determining the appropriate discipline include whether the employee voluntarily admits to and seeks assistance for an alcohol or other drug problem.

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### Section VI Political Activities

#### Purpose

To ensure that employees understand that the Hatch Act places limits on the ability to engage in certain political activities. Because the LDSS is funded with federal funds that are transmitted to it through the state, the Hatch Act restricts certain political activities of employees in the LDSS. This policy is to set forth what activities fall within this Act.

#### Scope

This policy applies to all employees.

#### A. Prohibited Activities

1. An employee may not:
  - a. Be a candidate for public office in a partisan election (an election in which one of more of the candidates was elected as, or is, a representative or a political party whose presidential candidates received votes in the preceding presidential election).
  - b. Use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office.
  - c. Directly or indirectly, coerce, attempt to coerce, command, or advise another employee to pay, lend, or contribute anything of value to a party, committee, organization, LDSS, or person for political purposes.
2. No employee shall threaten another employee with an adverse employment action for not voting for a certain candidate, require another employee to contribute to a political fund, influence an employee to buy tickets to a political fund raising event or similar event, or advise other employees to take part in a political activity.

#### B. Permissible Activities

1. An employee may take an active part in:
  - a. Participation in political party management which includes membership in, as well as holding office, in political parties, attendance and participation at political conventions, volunteer work for partisan candidates, political parties, etc.
  - b. Participating in partisan political elections which includes campaigning for candidates in partisan elections by making speeches, writing letters, drafting

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speeches, and soliciting voters to support or oppose a candidate as well as attending political meetings or rallies.

- c. Fundraising for political candidates or parties including making financial contributions and soliciting and collecting political contributions (provided such contributions are given voluntarily).
- 2. An employee may hold a partisan office if appointed to a vacancy but cannot subsequently campaign for that office.
- 3. An employee may serve as an election official at the polls and may serve as a poll watcher, checker, or challenger for a political party or candidate in a partisan election.

### **C. Penalties for Violating the Law**

If the federal Merit System Protection Board finds that a violation of this policy warrants dismissal from employment, the LDSS is required to terminate the employee. Notwithstanding what action might be taken by the federal government, the LDSS may discipline the employee for violating this policy and such discipline could result in termination.

### **D. Further Information**

- 1. The full text of the Hatch Act regulations are found in Title 5 of the Code of Federal Regulations part 151 (§§ 1501-1508).
- 2. An employee can seek an advisory opinion from the Office of Special Counsel at this address: *HATCHACT@osc.gov*.